

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J.D., on behalf of herself and others similarly situated, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 17-cv-02122-TSC
)	
ALEX M. AZAR, <i>et al.</i> ,)	
)	
Defendants.)	
)	

JOINT STATUS REPORT AND STIPULATION OF THE PARTIES

Pursuant to this Court’s Minute Order, dated August 9, 2019, Plaintiffs and Defendants have met and conferred and hereby respectfully submit the following Joint Report.

Procedural Background

On June 14, 2019, the Court of Appeals affirmed this Court’s certification of a class of all pregnant unaccompanied minors in Defendants’ custody, and affirmed the portion of this Court’s preliminary injunction that prohibits Defendants from obstructing or interfering with class members’ access to abortion. *J.D. v. Azar*, 925 F.3d 1291, 1339–40 (D.C. Cir. 2019). The Court of Appeals, however, vacated the portion of this Court’s preliminary injunction that prohibited Defendants from revealing a minor’s abortion decision or pregnancy to anyone (or forcing the minor to do so) absent her consent, and remanded to this Court to make further findings of fact and conclusions of law as to this aspect of Defendants’ policy to better enable appellate review. *Id.*

The Court of Appeals mandate issued on August 6, 2019, and Section 2 of this Court’s preliminary injunction is now vacated. Accordingly, on August 8, 2019, Plaintiffs filed a Motion

to Re-Open the Case, ECF No. 145, and a Motion for a Preliminary Injunction, ECF No. 144, requesting that this Court enter a new preliminary injunction, with the findings of facts and conclusions of law required by the Court of Appeals, that would enjoin Defendants from forcing any class member to reveal the fact of their pregnancy and their abortion decision to anyone, and from revealing that information to anyone themselves, either before or after an abortion, unless the class member provides non-coerced consent to such disclosure or needs emergency medical care and is incapacitated such that she is unable to inform a medical care provider herself.

On August 9, 2019, Defendants filed their Response to Plaintiffs' Motion to Re-Open the Case, ECF No. 146, requesting that the Court "enter a schedule for consideration of Plaintiffs' [] motion for a preliminary injunction that permits orderly briefing by the parties on a reasonable schedule whereby the government's response will be due three week[s] following the order reopening the case, and Plaintiffs' reply due two weeks after the response is filed." Shortly thereafter, this Court issued a Minute Order, granting Plaintiffs' Motion to Re-Open the Case, directing the Clerk to restore the case to the court's active docket, and further directing the parties to meet and confer and file a Joint Report by August 12, 2019, addressing the four issues outlined below. *See* August 9, 2019 Minute Order. Pursuant to this Court's order, the parties met and conferred on August 9, 2019 and on August 12, 2019, and submit below the following joint responses to the four issues identified by the Court.

Issues Ordered To Be Addressed By the Parties

1. Proposed Briefing Schedule for Plaintiffs' Motion for a Preliminary Injunction, ECF No. 144.

The parties agree to the briefing scheduled proposed by the Defendants in their Response to Plaintiffs' Motion to the Re-Open the Case, ECF No. 146, under which the Defendants' response to Plaintiffs' Motion for a Preliminary Injunction will be due on August 30, 2019—

three weeks from the date of the order reopening the case—with Plaintiffs’ reply to be due on September 13, 2019—two weeks after Defendants’ response is filed. This agreement is contingent on the parties’ joint stipulation, set out below, whereby the Defendants stipulate (along with their respective successors in office, officers, agents, servants, employees, attorneys, and anyone acting in concert with them) to continue to act in accordance with paragraph 2 of this Court’s April 16, 2018 Amended Class Certification and Preliminary Injunction Order, ECF No. 136, which enjoined them from, *inter alia*, “forcing any class member to reveal the fact of their pregnancies and/or their abortion decisions to anyone, and from revealing that fact or those decisions to anyone themselves, either before or after an abortion, unless the class member provides non-coerced consent to such disclosure or needs emergency medical care and is incapacitated such that she is unable to inform a medical care provider herself.” This stipulation terminates 45 days after the parties complete briefing on the preliminary injunction, under the schedule set forth herein, so as to give the Court sufficient time to rule on Plaintiffs’ Motion.

2. Statement Regarding Anticipated Factual Disputes Between Affiants.

The parties agree that they are unable to state whether they anticipate factual disputes between the affiants. The parties further agree to meet and confer following the completion of briefing on Plaintiffs’ Motion for a Preliminary Injunction to revisit this issue, and to provide the Court with a supplemental joint status report as to the parties’ position(s) on this issue on or before September 18, 2019.

3. Statement Concerning Whether Evidentiary Hearing Is Needed.

The parties agree that they are unable to state whether they believe an evidentiary hearing is necessary to resolve Plaintiffs’ Motion for a Preliminary Injunction. The parties agree to meet and confer following completion of briefing on Plaintiffs’ Motion for a Preliminary Injunction to

revisit this issue, and to provide the Court with a supplemental joint status report as to the parties' position(s) on this issue on or before September 18, 2019.

4. Statement from Defendants Regarding Voluntarily Cessation of Alleged Forced Disclosure Policy.

As detailed above, by signature of this document, the Defendants (along with their respective successors in office, officers, agents, servants, employees, attorneys, and anyone acting in concert with them) stipulate to continue to act in accordance with paragraph 2 of the April 16, 2018 Amended Class Certification and Preliminary Injunction Order. ECF No. 136. To provide this Court time to address the motion once fully briefed, this stipulation terminates 45 days after the parties complete briefing on the preliminary injunction, under the schedule set forth in this report.

A proposed order is attached.

August 12, 2019

Respectfully submitted,

/s/ Brigitte Amiri
Brigitte Amiri*
Meagan Burrows
Jennifer Dalven
Lindsey Kaley
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel. (212) 549-2633
Fax (212) 549-2652
bamiri@aclu.org
mburrows@aclu.org
jdalven@aclu.org
lkaley@aclu.org

Arthur B. Spitzer (D.C. Bar No. 235960)
Scott Michelman (D.C. Bar No. 1006945)
American Civil Liberties Union Foundation
of the District of Columbia
915 15th Street NW, Second Floor

Washington, D.C. 20005
Tel. 202-457-0800
Fax 202-457-0805
aspitzer@acludc.org
smichelman@acludc.org

Daniel Mach (D.C. Bar No. 461652)
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
Tel. (202) 675-2330
dmach@aclu.org

Elizabeth Gill
American Civil Liberties Union Foundation of
Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111
Tel. (415) 621-2493
Fax (415) 255-8437
egill@aclunc.org

Melissa Goodman
American Civil Liberties Union Foundation of
Southern California
1313 West 8th Street
Los Angeles, California 90017
Tel. (213) 977-9500
Fax (213) 977-5299
mgoodman@aclusocal.org

Mishan Wroe
Riley Safer Holmes & Cancila LLP
456 Montgomery Street, 16th Floor
San Francisco, CA 94104
Tel. (415) 275-8522
mwroe@rshc-law.com

**Admitted pro hac vice*

Attorneys for Plaintiffs

/s/ W. Daniel Shieh
W. Daniel Shieh

Sabatino F. Leo
Senior Litigation Counsel
Michael C. Heyse
Christina P. Greer
Trial Attorneys
Office of Immigration Litigation
Civil Division, U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 305-9802
Fax: (202) 305-1890
daniel.shieh@usdoj.gov

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

J.D., on behalf of herself and others similarly situated, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 17-cv-02122-TSC
)	
ALEX M. AZAR, <i>et al.</i> ,)	
)	
Defendants.)	
)	

[PROPOSED] ORDER ON PARTIES' STIPULATION

Upon consideration of the Joint Status Report and Stipulation of the Parties, and in recognition of Defendants' agreement to continue to act in accordance with Section 2 of this Court's April 16, 2018 Amended Class Certification and Preliminary Injunction Order, ECF No. 136, until 45 days after completion of the briefing of Plaintiffs' Motion for Preliminary Injunction, ECF No. 144, it is hereby

ORDERED that Defendants' opposition to Plaintiffs' Motion for Preliminary Injunction, ECF No. 144, is due August 30, 2019. Plaintiffs' reply in further support of their Motion for Preliminary Injunction is due September 13; and it is further

ORDERED that the parties will meet and confer and file a status report on September 18, 2019 as to factual disputes by affiants, and whether an evidentiary hearing is needed, and if so, how the parties propose proceeding at such a hearing.

Dated: August __, 2019

Tanya S. Chutkan
United States District Judge